



# BOARD OF INQUIRY (*Human Rights Code*)

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IN THE MATTER OF the *Ontario Human Rights Code*, 1981, S.O. 1981, c.53, as amended;

AND IN THE MATTER OF the complaint by Diana Parsonage and Corporate Cuisine dated May 13, 1991, alleging discrimination in contract by association with a person identified by race, colour, ancestry and ethnic origin.

**B E T W E E N :**

Diana Parsonage  
Corporate Cuisine

**Complainants**

- and -

Canadian Tire Corporation  
Clyde Vieira

**Respondents**

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## DECISION

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Adjudicator : Jeffry House

Date : November 1, 1995

Board File No: BI-0045-93

Decision No : 95-048

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Board of Inquiry (*Human Rights Code*)  
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*ONTARIO HUMAN RIGHTS CODE*  
R.S.O. 1990, c.H-19, as amended

BOARD OF INQUIRY

B E T W E E N:

CORPORATE CUISINE LTD. AND  
DIANA PARSONAGE

V.

CANADIAN TIRE CORPORATION AND  
CLYDE VIEIRA

D E C I S I O N

BOARD OF INQUIRY

Jeffry House

COUNSEL:

Suzanne Lopez

Counsel for The Ontario Human Rights  
Commission

Charles Robertson

Counsel for Canadian Tire

Dirk Van de Kamen

Corporation Ltd and Clyde Vieira



## BACKGROUND

On January 6, 1994, I was appointed by the Minister of Citizenship to inquire into a complaint made under the *Human Rights Code* by Corporate Cuisine Ltd. and Diana Parsonage against Canadian Tire Corporation, Ltd. and Clyde Vieira. The letter of appointment was made Exhibit 1 to the inquiry.

The complainant was represented by the Ontario Human Rights Commission in the person of Ms. Suzanne Lopez, Barrister and Solicitor. The Respondents were represented by Mr. Charles Robertson and Mr. Dirk Van de Kalen, Barristers and Solicitors.

## THE ISSUES

The question I am to answer is whether the complainants' right to contract on equal terms without discrimination because of race, colour, ancestry, and ethnic origin has been infringed, directly or indirectly, by the actions of Canadian Tire Ltd. or Clyde Vieira. I have further been asked to determine whether any right guaranteed to the complainants has been infringed "because of relationship, association, or dealings with a person or persons identified by a prohibited ground of discrimination" as set out in s. 12 of the *Human Rights Code*.

## THE LAW

### STATUTES:

The statutory provisions most relevant to the issue before me are ss. 3, 9, and 12 of the *Human Rights Code*, R.S.O. 1990, c. H-19 as amended. The provisions read as follows:

s. 3 Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age marital status, family status, or handicap.

s. 9 No person shall infringe, or do, directly, or indirectly, anything that infringes a right under this Part.

s. 12 A right under Part I is infringed where the discrimination is because of relationship association, or dealings with a person or persons identified by a prohibited ground of discrimination.

## DISCRIMINATION

The term "discrimination" has been authoritatively discussed by the Supreme Court of Canada in *Andrews v. Law Society of British Columbia* (1989) 10 C.H.R.R. D/5719 at 5746, by Justice MacIntyre.

"Discrimination may be described as a distinction, whether intentional or not, but based on grounds relating to the personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group, not imposed upon others, or which withholds or limits access to opportunities benefits and advantages available to other members of society."

A useful short definition of the term "discrimination" is that set out in *Insurance Corporation of British Columbia v. Heerspink* (1978) 6 W.W.R. 702 (B.C.C.A.) at 708:

Discrimination is "treatment or consideration of, or making a distinction in favour of, or against a person, based on the group, category, or class to which that person belongs, rather than on individual merit".

## THE BURDEN OF PROOF

The burden of proof in cases involving discrimination in employment is that set out in *Basi v. Canadian National Railway Co.* (1988) 9 C.H.R.R. D/5029 at par. 38474. That is, the complainant(s) must establish a prima facie case of discrimination; if this is done successfully, the burden then shifts to the employer to provide a reasonable explanation for the behaviour complained of. Once an explanation has been provided, the eventual burden rests on the complainant to show that the explanation provided is a pretext, and that the behaviour complained of occurred in whole or part, consciously or unconsciously, because of discrimination on an unlawful basis. The ordinary civil standard of proof, a preponderance of evidence on the balance of probabilities, applies. (See *Basi*, supra. Par.38480-38487 for discussion of this point. Also see *Richards v. Waisglass* (Ontario Board of Inquiry unreported, June 6, 1994, Board File No. 92-0219).

## THE COMPLAINT

The complaint made under the *Human Rights Code* was formally signed on May 13, 1991 at Niagara Falls by Diana Parsonage in her own capacity, and as President and Director of Corporate Cuisine Ltd., a company of which she was the majority shareholder, and by her husband, Brian Parsonage, the only other shareholder in that corporation.

The complaint sets out, in general terms, the allegations which were made by Mrs. Parsonage. Her testimony before me expanded somewhat on the specifics of the matters alleged. Briefly put, the complaint alleges that Corporate Cuisine Ltd. entered into a contract with Canadian Tire Corporation Ltd. on April 11, 1990, to provide cafeteria services to an establishment located at 1615 Clark Blvd., Bramalea Ontario, and owned and operated by Canadian Tire. The general manager at this location, which was known as the Adjusting Distribution Centre, was, at all relevant times, Mr. Clyde Vieira, the personal Respondent. The complaint alleges that Mrs. Parsonage provided cafeteria services at that location for approximately four months, without any apparent difficulty, but that when she hired a black man, Mr. Lindo, to work in the cafeteria the attitude of Mr. Vieira changed, and that both he and some of the employees began to complain about the service they were receiving. The complaint goes on to allege that several racist comments were made "to Mr. Lindo" including "I see we have a nigger in the kitchen." Further, two persons, "Willie and Tom" stated that they did not want a black person serving them. Mrs. Parsonage goes on to allege in the complaint that on "numerous occasions", General Manager Vieira told her to terminate Mr. Lindo's employment, or he would get rid of Mr. Lindo himself. Mrs. Parsonage refused to let Mr. Lindo go, she says, because she was satisfied with his performance.

On September 20th, 1991, Mrs. Parsonage was informed in writing that her contract was at an end, without any reason being given for the termination. The complaint alleges that the conduct of Canadian Tire and Mr. Vieira amounts to unlawful discrimination against Mrs. Parsonage and her company, Corporate Cuisine, because of its association with a black person, Mr. Lindo, and that such conduct violates the *Ontario Human Rights Code*, ss. 3, 9, and 12. (The relevant sections were numbered 3, 8, and 11 at the time the complaint was filed.)

## **RESPONDENTS' POSITION**

Both Canadian Tire Corporation and Clyde Vieira denied the allegations. The essence of their position before me was that the cafeteria run by Mrs. Parsonage had some problems during the period when Mrs. Parsonage was in charge, but that these problems became legion when Mr. Lindo was manager, to the extent that the contract had to be terminated due to inadequate performance of the obligations thereunder.

## **THE CASE FOR THE COMPLAINANT**

The case for Mrs. Parsonage and Corporate Cuisine Ltd. was presented by five witnesses. Mrs. Parsonage gave lengthy testimony, and she was followed by her husband Brian Parsonage, Mr. Lindo, and Melanie Parsonage. The latter is Mrs. Parsonage's daughter who worked in the cafeteria for some weeks in 1990. Dr. Francis Henry gave expert evidence.

## **MRS. DIANA PARSONAGE**

Mrs. Parsonage testified first. She has an impressive background in the food services industry. She was born in the United Kingdom, and worked as a supervisor of a buffeteria for British Rail Ltd. for 5 years. She then moved to Canada, and was hired in a similar capacity by Eastwood Foods. During her 7 ½ years there, she managed cafeterias located at Spar Aerospace and at Consumers' Glass Ltd. Later, she worked as a manager at Simpson's Yorkdale Garden Restaurant, where she was responsible for kitchen staff and waitresses. From 1984 to 1988, she worked at Chances Restaurant in Brampton as General Manager. In 1988, she began her own company D.C. Catering. Her activities with D.C. Catering involved food preparation and associated managerial tasks for industrial cafeterias, as well as catering for weddings and banquets. At some point prior to the events referred to in the complaint before me, Mrs. Parsonage changed the name of D.C. Catering to Corporate Cuisine Ltd. It is not clear to me whether D.C. Catering had been a Limited Company prior to the transmutation to Corporate Cuisine, but nothing turns on this.

Her two main clients during these years were Lummos Engineering Ltd. and A.M. Can Corp. She ran cafeterias frequented by employees of these firms, she stated, until she began to negotiate with Canadian Tire Corporation for the contract at Clark Blvd. (and, she said, with the prospect of other cafeteria contracts at nearby Canadian Tire facilities). As noted, the contract at Clark Blvd. was finally signed on April 11, 1990. That contract, which is Exhibit # 5 to the hearing, required, among other things, that Corporate Cuisine keep the cafeteria "adequately serviced and supplied with appropriate merchandise of good quality at agreed to prices", "to maintain conditions of sanitation and cleanliness in the storage and food preparation areas, and also to clean the chairs and tables in the eating area of the cafeteria" and to maintain hours of operation from 6:30 A.M. to 2:30 p.m. unless an "alternate" be decided upon by mutual agreement. The contract states that "If, for any reason whatsoever, either party wishes to terminate this agreement, sixty days written notice must be delivered to the other party."

Mrs. Parsonage testified that she informed Mr. Vieira, at the time the contract was signed, that she would eventually be turning the day-to-day operation of the cafeteria to another person, whom she would be actively seeking, but that, at the outset, she would be running the cafeteria herself. She began operations on May 1, 1990, and was present at the Clark Blvd. facility every day until August 28th, 1990.

Mrs. Parsonage described the operation as "goof-proof". She indicated that, in her view, operations were sufficiently standardized, and the use of pre-made food sufficiently extensive, that it was a very simple cafeteria to run. She herself made only shepards' pie, ribs, chicken, and coffee. Everything else came ready-to-heat, or ready to eat, from the manufacturer. She stated that she had no complaints until July 24th, when she hired Mr. Lindo, and that she thought that the relationship with Canadian Tire and its employees up to that time was excellent.

Mrs. Parsonage testified that Mr. Lindo was a friend of the family since he had been in grade two, and had extensive previous food services preparation. She said he had worked for A. & P. Produce, O'Tooles' Restaurant, and Pizza Hut. On the basis of this experience, and the fact that he had not obtained a summer job, she hired him, and trained him extensively over a six week period. She specifically denied that Mr. Lindo was the boyfriend of her daughter Melanie.

According to Mrs. Parsonage, racial incidents began immediately, once Mr. Lindo appeared at Canadian Tire. The first occurred on July 24th, Mr. Lindo's first day, during the first lunch period. (There were two separate "lunch shifts" at the Clark Blvd. facility.) Mrs. Parsonage

testified she heard Tom Stagg, a supervisor, say to another supervisor, Bruce Piggins, "I see we have a nigger in the kitchen". Mr. Piggins, she said, replied "Not for long." According to Mrs. Parsonage, these words were spoken as the two men made their way to a table in the cafeteria where they habitually sat. At the time she heard this exchange, Mrs. Parsonage was at the cash register, and Mr. Lindo nearby at the steam table. Mrs. Parsonage confirmed her perception of the conversation with Mr. Lindo, and then, after lunch, went to Mr. Stagg's office to complain. She said that Mr. Stagg said "it was just a joke". She later complained to Mr. Vieira, who said he did not believe it, but would investigate. She was never asked for any details from Mr. Vieira, she stated, and never received the results of any investigation.

The very next day, according to Mrs. Parsonage, she was asked to prepare tea, muffins, and specialty coffee for a meeting in the Boardroom. She sent Mr. Lindo into the Boardroom, she said, but Mr. Vieira told him to get out. He then told Mrs. Parsonage "Find something better for him to do--you take care of it" (i.e. the meeting). Feeling concerned for Mr. Lindo, she nonetheless complied with the order. Still in the first week of Mr. Lindo's employ, she asked him to go out into the plant area and make sure that there were coffee cups, creamer, teabags, and sugar available for the coming coffee break. After replenishing the stock, Mr. Lindo returned to the cafeteria. Five minutes later, someone came to complain about the lack of creamers. When Mrs. Parsonage investigated, she found that the creamers had been placed in the garbage. She knew these were fresh creamers, just received from the distributor, and checked by her. So the conclusion she came to was that someone who was not happy with Mr. Lindo's race had decided to use this method of harassing him. On another occasion, she reported, an employee remarked in passing to her that "those people" (referring to black people) are lazy, aren't they?"

Mrs. Parsonage testified that Mr. Lindo worked only ten hours that first week, but that despite the harassment, she continued to train him, giving him gradually more hours until she decided, on August 27, that he was sufficiently proficient, and asked him if he would like to stay on as manager for six months. She knew of his desire to return to school, and would find another manager by that time. Mr. Lindo agreed. She herself was moving to Niagara Falls that very week end.

The weeks after Mr. Lindo's first experiences at Canadian Tire also included discriminatory treatment, according to Mrs. Parsonage. On one occasion, an employee named Willie Jochum, she said, refused to be served by Mr. Lindo. When Mrs. Parsonage pointed out that there were other members of visible minorities in the plant, Mr. Jochum allegedly responded: "Yes, but they don't

serve me food." Mr. Lindo was present, she said, and overheard this comment. On another occasion, Mr. Lindo was in the washroom, and an employee came out, and claimed that Mr. Lindo did not wash his hands. So, Mrs. Parsonage waited until Mr. Lindo came out, smelled his hands, (which were cold, as if recently washed) and smelled of soap. She reached the conclusion that this was another incident of harassment of Mr. Lindo by employees at Canadian Tire.

A further incident occurred later on. The Clark Blvd. facility, contained a shop for employees. This shop offered merchandise returned by purchasers, and thus not saleable as new merchandise in the chain of Canadian Tire stores which are open to the public. Employees are offered these items at a discount. However, when Mrs. Parsonage attended with Mr. Lindo, he was told he should "get out".

When Mrs. Parsonage protested that Mr. Lindo was with her, the person in charge of the store indicated that Mr. Lindo was not an employee, and so not entitled to shop there. Mrs. Parsonage contrasted this situation with those times when she shopped there with her daughter; no complaint was ever made.

Mrs. Parsonage also felt that Mr. Vieira had not responded appropriately when she first introduced Mr. Lindo to him. She said Mr. Vieira had simply said "Welcome aboard", but did not look up or shake hands with Mr. Lindo.

Mrs. Parsonage appointed Mr. Lindo manager on August 27th. On the weekend of August 29th, she and her husband moved to Niagara Falls, some substantial distance away from the Clark Blvd. facility. When she returned to work on September 5th, a Wednesday, Mr. Vieira complained that there were no stir sticks for the coffee. She felt this was not an important matter, but Mr. Vieira said that Mr. Lindo was not doing a good job, and that if he was kept on, Mrs. Parsonage could lose her contract with Canadian Tire. Next, Mrs. Parsonage was approached, she said, by an employee asking for help on a United Way campaign. Mrs. Parsonage agreed, and said Mr. Lindo was going to help. At this point, according to Mrs. Parsonage, Ms. St. Andrews appeared to lose interest, and later said that the employees would do the event themselves, which they did. Mrs. Parsonage testified that she had purchased food to donate, and could not return it, and so lost some money due to the change of heart by Ms. St. Andrews. She felt this change of heart was due entirely to Mr. Lindo's race.

The week of September 17-22 proved to be the last week that Corporate Cuisine operated a cafeteria at the Clark Blvd. facility of Canadian Tire. On Monday the 17th, Mrs. Parsonage testified, Mr. Lindo called to tell Mrs. Parsonage that the food held in the freezer had spoiled over the weekend; someone had apparently pulled the plug out, or it had accidentally been dislodged. Further, an order of food that Mrs. Parsonage had made on the previous Friday did not arrive. Consequently, the cafeteria was not able to provide a lunch for the employees, who had to be given an extra one-half hour break by management, so they could attend fast food restaurants nearby. On the next day, the 19th, Mrs. Parsonage was asked to speak to Mr. Vieira in his office. He told her the cafeteria was not going well; apart from the problems of the 17th, Mr. Vieira told her that tables were not being wiped, greasy trays were being placed out for use, and Mr. Vieira told Mrs. Parsonage "Fire the black kid; he's not doing a good job." Mrs. Parsonage and Mr. Vieira then had a heated discussion about Mr. Lindo's job performance. According to Mrs. Parsonage, she asked Mr. Vieira whether he just wanted a "white middle class lady" like herself in the cafeteria, and he responded that he did. Further argument followed, resulting in Mrs. Parsonage being told that her contract was terminated, and that she would be advised in writing the next day. This in fact, was done.

These, essentially, were the allegations made by Mrs. Parsonage.

## **BRIAN PARSONAGE**

The next witness was Mrs. Parsonage's husband, Brian Parsonage. Although I found him to be a forthright and honest witness, I do not propose to analyse his evidence in depth. He had very limited contact with the cafeteria operation, and estimated that he spent only five minutes per working day there. He would, on occasion, drop Mrs. Parsonage there in the mornings, have a cup of coffee and a donut, and leave for his own employment. His evidence as to the frequency that he drove his wife to the Clark Blvd. facility in September, 1990, was of some value to me. He estimated that he drove his wife three times per week, Wednesday, Thursday, and Friday during the month of September. Prior to that, he testified that he came there with his wife "quite regularly".

## LESLIE LINDO

Leslie Lindo was the third witness. He now lives in Hull, Quebec, and attends Carleton University. He testified that prior to July, 1990, he had several jobs. The first was as a check out baggage carrier at A & P Produce. He would assist customers to carry their groceries to the parking lot. He would also retrieve any grocery carts which had been left in the parking lot. He had also worked at the Brick Warehouse, for a pharmacy, and, for a month at a Pizza Hut Restaurant where he cooked pizzas for delivery. He was 22 years old when approached by Diana Parsonage to work for her at Clark Blvd.

According to Mr. Lindo, he had not known the Parsonage family for very long, but had dated Mrs. Parsonage's daughter Melanie during the 1989-90 school year. He had taken her to the 1990 High School Prom, for example.

Mr. Lindo testified that he was carefully trained by Diana Parsonage. He stated that although Diana cooked everyday from scratch, the cafeteria did not require "a rocket scientist" to run it. By the end of the training period, he testified, he felt fully capable of handling the responsibility. He noted that he did not receive a pay raise when he ascended to the manager's position, but continued to be paid \$250.00 per week.

Mr. Lindo had a clear recollection of the incident involving the comment "there's a nigger in the kitchen". He said that the incident occurred some weeks after he began to work at the Clark Blvd. cafeteria. The words quoted were the punch line of a joke told at the manager's table. He did not know the name of the man who told the joke. Although he testified that the joke was told in a "high voice", when asked to speak at the volume and tone which he had heard, Mr. Lindo spoke relatively softly, either at conversational level or slightly louder than that. He said that the people who heard the joke were all laughing. He was appalled and upset, and turned to Diana Parsonage, saying: "Did you hear that?" Mrs. Parsonage confirmed that she had.

The next day, Mr. Lindo confronted Tom Stagg, who was a manager who had apparently laughed at the joke. Mr. Lindo also felt that Mr. Stagg stared at him as the joke was being told. Mr. Stagg told him that at this plant, "we can stare at whoever we want, and say whatever we want." Mr. Lindo stated that Clyde Vieira never spoke to him at all about this incident.

Mr. Lindo recalled another incident which happened early in his employment at Clark Blvd. He was seated in a chair in the cafeteria when an employee, later identified as Willie Jochum appeared, and in a rude manner, told Mr. Lindo to "Get out of my seat". Mr. Lindo complied, though he "didn't see his name on the chair," and told Mrs. Parsonage about it. On another occasion, this same Mr. Jochum became irritated because he felt Mr. Lindo had shortchanged him at the cash, became red in the face, and used a harsh tone. Mr. Lindo could, he said "sense his body language and tone" was one which was suffused with prejudice. Mr. Lindo said he believes that Germans such as Mr. Jochum are prejudiced against blacks. Nothing further occurred however, and Mr. Jochum continued to eat at the cafeteria throughout the summer.

Mr. Lindo also felt Clyde Vieira supervised him too closely. He had, he stated, a few visits from Mr. Vieira, who complained about greasy trays and cleanliness problems. Mr. Lindo felt that "I didn't work for this man, I worked for Diana."

Mr. Lindo also recalled the incident which led to the termination of the contract. He indicated that, at that time, he was not responsible for ordering food, and on Monday the 17th of September, the food failed to arrive. He testified that there had indeed been an occasion when the food had rotted because the freezer plug had been dislodged. That had occurred some weeks earlier. When the food failed to arrive on the 17th, he called Diana Parsonage, who explained that there had been an error made by the supplier. She told him to go out and make purchases himself, which he did. When he returned, he was confronted by an angry Clyde Vieira. Mr. Lindo felt that Mr. Vieira was angry because he had left the cafeteria for any reason. Mr. Vieira, he testified, "was close in my face, and red in the face." He spoke in an angry tone, but was controlled. He was not ranting and raving. Mr. Lindo stated that he felt Mr. Vieira was a dictator who didn't want to hear from a young person like himself. He told Mr. Vieira, "I don't work for you, I work for Diana".

It will be seen that there are significant differences between Mr. Lindo's testimony and that of Mrs. Parsonage. For example, Mrs. Parsonage stated that the "nigger in the kitchen" incident occurred on Mr. Lindo's first day. Mr. Lindo stated it occurred after he had been there several weeks. Mrs. Parsonage testified that the very next day, Mr. Lindo had been told to "get out" of the boardroom by Mr. Vieira. Mr. Lindo made no mention of the incident at all. Mrs. Parsonage had stated that her daughter was not in a boyfriend/girlfriend relationship with Mr. Lindo, but that he had been a family friend for many years. Mr. Lindo testified he knew the Parsonage family for a short time, and had taken Melanie Parsonage to the "Prom" just prior to being hired by Mrs.

Parsonage. Mrs. Parsonage testified that Mr. Lindo was hired by her because he was an intelligent young man who had significant food preparation experience. According to Mr. Lindo, that experience amounted to one month as a pizza maker at Pizza Hut. He had in fact worked at O'Tooles Restaurant, employment cited by Mrs. Parsonage as relevant to her decision to hire him, but this had occurred after his employment with Mrs. Parsonage. His employment at A. & P. Produce was as a bagging clerk, a job which did not, I think, provide him with relevant experience for the Corporate Cuisine position offered him.

Furthermore, Mr. Lindo did not mention the incident which Mrs. Parsonage referred to, wherein Mr. Lindo was alleged to have been told to leave the employees' shop at Clark Boulevard. He also provided a very different version of the incident involving Willie Jochum refusing to be served by him. According to Mr. Lindo, the incident was triggered at the cash register, and did not involve being served food. Rather, it involved a dispute over the change which Mr. Lindo had returned to Mr. Jochum. Mr. Lindo said that Mr. Jochum continued to eat in the cafeteria without incident after that. Finally, Mr. Lindo testified that the occasion when he had no food at the cafeteria was not the date that the freezer plug had been unplugged; that had occurred some weeks earlier. Mrs. Parsonage had suggested in evidence that the lack of food incident had been because of sabotage of Mr. Lindo by an unknown employees at Canadian Tire. Mr. Lindo testified that Diana Parsonage told him that a supplier had not delivered the purchases as required.

#### MELANIE PARSONAGE

Melanie Parsonage testified next. She is 23 years old. and a student at Brock University. She is now employed during the summer months at Marineland and Game Farm, Niagara Falls. During the summer of 1990, when she worked at the Clark Blvd. cafeteria with her mother and Mr. Lindo, she was 18 years of age. She had some cafeteria experience, as she had assisted her mother at other cafeterias which her mother had run while Melanie was in high school.

She testified that she had been working at the cafeteria for three to four weeks before Mr. Lindo was hired in late July. She stated that she and Mr. Lindo were not boyfriend and girlfriend, but did go to movies and clubs together. She rejected the term "boyfriend" she said, because "He was not my boyfriend in respect of intimacy."

Melanie confirmed two incidents in which, she said, Willie Jochum had refused to be served by Mr. Lindo. In one incident, Mr. Jochum simply told her that he would prefer it if she served him. A second time, he indicated he wanted Diana Parsonage, rather than Mr. Lindo, to serve him.

As well, Melanie Parsonage testified to an ongoing problem over the summer, which was that the patrons of the cafeteria complained regularly about the trays upon which they were to place the plates of food which they had selected. There were complaints throughout the summer that the trays were often dirty. She testified that the dirty trays were the fault of the patrons, who would continually return used trays to the pile for clean trays. Then, the next customer would be confronted by a dirty tray. Although this problem persisted for most of the summer, it was solved when one of the cafeteria staff put up a sign over the two piles of trays. One pile was labelled "clean trays" and the other, "dirty trays". Melanie testified that this solved the problem.

She testified to a further problem, as well. According to her, difficulties sometimes arose when her mother was not on site. A common one was that she and Mr. Lindo would often play music after the end of the luncheon shift, as they cleaned up. Either she or Mr. Lindo would bring tapes of music they enjoyed, and play it, "not loud, just enough so that you could hear it." Management did not like them to do this, she testified. One manager, who she knew as "Roger", objected one afternoon to reggae music they were playing. He had been in the adjoining Conference Room and came into the cafeteria and said it sounded like a washing machine, and demanded that it be turned off, which it was. In cross examination, she indicated that there was an air conditioner in the cafeteria which interfered with the ability to hear the music, and that on occasion, the sound was turned up higher than usual. She also indicated that she felt that the sound of the music on that day likely did penetrate into the Conference Room.

In cross examination, it was pointed out to Melanie Parsonage that, in her witness statement, signed January 23, 1992, and made Exhibit # 23 at this inquiry, she had mentioned only one incident concerning Willie Jochum. She indicated that, despite the statement as written, there had indeed been two such incidents.

## DR. FRANCES HENRY

The case for Ms. Parsonage and Corporate Cuisine also benefitted from the expert testimony of Dr. Frances Henry, a well-known expert in the area of racial discrimination and harassment. She has testified before me previously, and has indeed been qualified by me as an expert in the area of racial discrimination. Since that time, she has continued to be a prolific and important researcher in this area. In 1994, for example, she published The Caribbean Diaspora in Toronto: Learning to Live with Racism, a textbook published by the University of Toronto Press. In 1995, she co-authored The Colour of Democracy: Racism in Canadian Society, a sociology text published by Harcourt, Brace of Canada.

Her credentials were not contested by the Respondents, who in fact elected not to cross-examine Dr. Henry. She testified, and I accept, that the workplace is a common locus of racism in Canada, and that, for members of the "Caribbean diaspora" it may well be that the most significant and debilitating forms of racism which members of this group endure occur there. She testified that a common manner in which racism is expressed is in the form of the racial slur or joke. Dr. Henry indicated that, when confronted by authority, it is common for the person who used the slur to denied that it was used, or to explain it away as just a joke. She said that these strategies of denial often work to cause more pain to the person so referred to, who, it is now said, is inventing tales, and has a weak grip on reality. A common problem, she testified, is that when the person subjected to slurs reports the incident to the manager, the manager does nothing, claiming that the victim is "overly sensitive".

She also testified that social science research has strengthened the view that white males are far more accepting of black women at the workplace than they are of black men. The former are seen as women first; there is sometimes a sexual component to the relative acceptance black woman are able to achieve, while black men are often thought to be threatening and aggressive, particularly when young.

She confirmed that use of the term "nigger" is strongly indicative of bias against black people. In her view, it is not the case that employment of a number of people of colour necessarily proves a lack of discrimination by a given employer. She stated that, especially in Metropolitan Toronto, it is nearly impossible for a large firm to have no people of colour employed, given the makeup of the labour pool. Rather, she indicated, a good indicator of lack of discriminatory practice is the presence of people of colour in the managerial levels, "beyond a token presence".

Dr. Henry also testified that the existence of an anti-racism policy does not necessarily guarantee the absence of discrimination. More important is the strategy of implementation of that policy. As I understand her, a policy which exists on paper has only a cosmetic effect; what is crucial is whether, when racial problems arise, the procedures set out are in fact used.

Finally, Dr. Henry alluded to research which indicates that black men are often hired by the food and cafeteria industries, but that they are often "kept in the back", preparing food but not serving it. This may be because the managers of these firms have stereotypical ideas about black males, or because they believe that their customers harbour such attitudes.

### CASE FOR THE RESPONDENTS

The Respondents' case was put in through a great number of witnesses. To summarize, the Respondents denied that unlawful discrimination had anything to do with their decision to end the contract with Corporate Cuisine. They argued that the inadequacy of the cafeteria, including lack of cleanliness, inconsistent pricing, lack of food on occasion, and other problems was the only reason the contract was cancelled. As well, they specifically denied that any comment concerning a "nigger in the kitchen" had ever been made, and produced, as witnesses, most of the persons who might have either made or heard that comment, to deny that it had been made. As well, Clyde Vieira testified as to the investigation he had made into the remark, and his conclusion that no remark had ever been made, as well as other matters. Mavis McLean, a black woman who worked in the cafeteria at Clark Blvd. after Mr. Lindo had left, testified as to the positive nature of her employment there. Several black persons testified as to their long-term relationships with Clyde Vieira, and to his lack of prejudice. Finally, numerous employees testified as to their view that the cafeteria became inadequate as the summer wore on, and Mrs. Parsonage was more often absent.

### CLYDE VIEIRA

The first witness for the Respondents was Clyde Vieira. He is the General Manager at Clark Blvd. and has been there since 1986. He has a total of 32 years service with Canadian Tire. He testified that he has had, at all relevant times, full responsibility for the Clark Blvd. Centre, and that it had 145 full-time employees and 25-30 summer students in 1990. Due to cutbacks, there are now 69 full-time employees working there. Mr. Vieira has no authority over any Canadian Tire Corporation facility other than that at Clark Blvd.

Mr. Vieira is white, and of Portuguese descent. He was born in Guyana, and educated at a racially mixed private school in Trinidad, before coming to Canada as a young man. He testified that it was preposterous to suggest that he had a prejudice against black people or people from the Caribbean. He said that black Caribbean culture "is my culture"; for example that he regularly participates in events such as Carnival, trades calypso and other tapes with employees, and so on.

He testified that 15 to 20% of the employees at Clark Blvd. were visible minorities in 1990. From 1986 to 1989, there were two supervisors working under Mr. Vieira, Tom Stagg and Morris Marshall. Mr. Marshall, who is black and originally from Trinidad, was hired by Mr. Vieira in 1970, and rose in the company with him. He took early retirement just prior to the time when the cafeteria run by Mrs. Parsonage came to the Clark Avenue facility. Mr. Vieira testified that he had also hired a number of visible minority women in the office at the Clark Blvd. facility, whose names he gave, and many of whom testified before me subsequently.

Mr. Vieira stated that he had decided on the need for a cafeteria after a number of years when the Clark Blvd. facility had been served only by a coffee truck with a minimal selection of sandwiches. He hoped to get someone who would provide "good home cooking", and a balanced meal. He offered the contract to Mrs. Parsonage on the basis that he felt she had the experience to be able to do so. He denied Mrs. Parsonage's allegation that, prior to her entering into the contract, she had advised him that she would operate it for only a short time before turning it over to someone she would hire. He said that, if she had indicated this, he would not have offered her the contract.

Mr. Vieira generally stated that there were few problems at the cafeteria at the outset, but more later, as Mrs. Parsonage absented herself from the operation. While Mrs. Parsonage had stated that she has on scene every single day until the last weekend in August when she moved to Niagara Falls, Mr. Vieira testified that there were periods of two or three days in August when Mrs. Parsonage simply left the cafeteria to her daughter Melanie and Mr. Lindo. In his view, these two people were totally lacking in the ability and experience necessary to run a large industrial cafeteria successfully.

However, he said, when Mrs. Parsonage first indicated that she would be moving to Niagara Falls, he became very concerned. He felt that the distance was too great to allow a commute with a 7:00 start time for the cafeteria; but he said that Mrs. Parsonage indicated that she would be staying overnight on a regular basis at Orangeville, a substantially nearer town, and that he need not worry. He decided, he said, to give her the benefit of the doubt and see what would occur.

Mr. Vieira testified that, during the time that Melanie Parsonage and Mr. Lindo operated the cafeteria alone, problems which before were manageable, became unmanageable. Mrs. Parsonage had failed to produce a price list, he said, but once her daughter and Mr. Lindo were in charge, prices became a guessing game. This, he said, caused staff discontent, which management wished to minimise.

He testified that the tables were not cleaned after the second lunch shift, and he had to assign the janitor, Art Lucas, to do it, "or it would never get done".

He stated that the quality of food began to decline. The french fries would be cold, and there would be too few main course dinners prepared, so that second lunch personnel might have to content themselves with something less than a square meal. Presentation of food left something to be desired as well. Management and staff participated in a Quality Circle meetings which were to deal with ongoing problems at the plant. Exhibit 27 is a copy of the Minutes of the Quality Circle meeting for May 1, 1990. Mr. Vieira referred to point 6 on the agenda, which had to do with minor problems being encountered in the set-up of the new cafeteria. The minutes record that a cafeteria committee was to be developed to discuss issues of concern in the future.

Mr. Vieira then identified Exhibit 28 as a minute from that meeting, coming perhaps two or three weeks after May 1st. A number of problems are referred to in that document, including inconsistency in pricing, lack of supplies such as cream, sugar, juices, and milk, lack of vegetables, and lack of selection overall. Mr. Vieira testified that he took these matters up with Mrs. Parsonage repeatedly, and that she promised to deal with them, but did not. Exhibit 30, the Minutes of the Quality Circle Meeting for September 11, 1990, once again refers to inconsistent pricing, and states that "Clyde has spoken to Diana re these problems. Hopefully, things will improve".

Mr. Vieira testified that he did not "over supervise" Mr. Lindo, as alleged, but he did have occasion to raise problems with him. However, he testified that when he tried to discuss the existence of greasy trays in the cafeteria, Mr. Lindo responded by saying words to the effect "Don't tell me your problems, tell Diana". In cross examination, Mr. Vieira testified that he felt it was inappropriate for Mr. Lindo to have answered in this way. To Mr. Vieira, it meant that Mr. Lindo was not willing to fix a problem brought to his attention unless Diana told him to do it. When he did so, he states, her attitude was that she did not believe it. She never followed through on what was requested of her, he said.

He recalled the incident when there had been no food at the cafeteria, which had been alluded to by both Mr. Lindo and Diana Parsonage. He said that he felt that it was entirely inappropriate that an industrial cafeteria, properly run, would have no food at 7:00 A.M. on a working day. He confirmed that the staff had to be given extra time for lunch, at an estimated cost of \$600.00 to Canadian Tire. He said the incident made him furious, because "Diana should insure the smooth day-to-day operation of the cafeteria." In cross examination, he refused to alter his position when shown exhibit 20, an invoice that establishes that at least \$260.00 of food had been ordered on September 17th. He said that even in the case that a distributor was the cause of the problem, "that doesn't relieve them of their responsibility. If you leave one day and there's no food for the next day, that's very unprofessional."

He also referred to dunning letters and phone calls he received from food distributors who had not been paid by Corporate Cuisine, and who therefore called him under the impression that Canadian Tire was responsible for paying the bills. He referred to one incident when representatives of a supplier attended at the cafeteria and demanded their money of Mrs. Parsonage in loud and insulting language. He testified that, later in the contract, suppliers were asking for cash on delivery, rather than the more common 30 days credit.

He stated that the totality of all these difficulties led him to decide that the contract was at an end. He admits that he "blew up at her" but that there were too many problems, and that the contract had to be terminated. He indicated that he had not thought about terminating the contract till then, and had made no alternate arrangements, nor had he solicited any advice from anyone.

Mr. Vieira also testified in depth as to the alleged "nigger in the kitchen" incident. He stated that on the day the incident allegedly occurred, he heard about it from Tom Stagg, a manager, who told him that Mr. Lindo accused him of calling him a "nigger". Tom said that it had never happened. Mr. Vieira said he would investigate it. He testified in cross examination that he said that he had to take steps to see if the incident happened. Mr. Vieira said that Mrs. Parsonage was not in the plant that day, and so he went to Mr. Lindo and told him that he should not venture into the plant to accuse anyone of anything. He said that "if you've got a problem, come and see me. Don't go into the plant area and make allegations." He then walked away.

In cross examination, he discussed his investigation. He went to each of the managers who were likely seated at the manager's table (there was evidence that everyone sat in precisely the same seat from one year to the next), and asked them what had happened. He says he asked each of the

managers whether there had been any racial jokes "directed at Mr. Lindo". He also called Don Bell, a manager at another facility who had happened to be present for lunch. Mr. Bell confirmed that there had been some joking around but that there was "nothing specifically directed at Mr. Lindo." Mr. Vieira concluded that, in the absence of confirmation, there was nothing he could do but give his managers the benefit of the doubt. He never reported this conclusion to Mr. Lindo, or to Mrs. Parsonage.

He noted that he had known many of these individuals for many years, and did not believe any of them were racists. He admitted that he had never had any managerial training which dealt specifically with racism, and did not know whether there was any policy in the employees' handbook which dealt with racism or discrimination. He felt that it was the policy of the company to demand that everyone be treated fairly, but that beyond that, he was unaware of any particular policy.

In response to questions from me, Mr. Vieira admitted that the staff members who are members of visible minorities sat at a table adjoining the managers' table, but that he had not asked them whether the "nigger in the kitchen" comment occurred. He told me that he kept his inquiries within management circles so as not to unduly magnify the issue by letting his investigation of senior managers become known throughout the plant. He told me that, in retrospect, he ought to have done so.

It later transpired that Canadian Tire Corporation does have a Human Rights Policy, and did have one at all relevant times. (It was made exhibits #62 and # 65 at the inquiry). Mr. Vieira was examined about the policy. When asked about racial jokes, and whether they were tolerated, he said that "it depends on the context. If employees are doing it jokingly, and it doesn't get out of hand" it may not result in discipline. "It is very difficult to stop those things in the workplace," he said. He said it would be different if the jokes were made publicly, and not between colleagues. He agreed that if anyone overheard the joke, it would become a public situation, and a problem.

I was impressed with Mr. Vieira as a witness. I believe he testified honestly before me on all material points. While I do have concerns about the nature and quality of the investigation he pursued with regards to the "nigger in the kitchen" incident, those concerns are based upon the evidence he gave, which did not attempt to embellish what he had done.

## TOM STAGG

The next witness was Tom Stagg. He has been a supervisor at Canadian Tire for twenty years. In 1990, he had 35-40 employees under his supervision, including black people, East Indians, Filipinos, and other nationalities. He testified that he ate regularly at the cafeteria, and had a place where he always sat with other managers. He identified the seating plan, including the fact that various members of visible minorities sat at the immediately adjoining table, well within earshot. He said that Morris Marshall, the black Trinidadian manager who had retired in December, 1989, always sat at that table as long as his employment continued. Of Mr. Marshall, he testified "We worked together twenty years. He's a close friend".

Mr. Stagg mentioned a number of problems associated with the operation of the cafeteria. He himself was contacted about invoices which had not been paid. As well, he felt that there were problems in the variety of the food being offered, especially after Diana Parsonage had absented herself. He believed that the cleanliness level had deteriorated over time, and recalled seeing maggots in some left-over water in the bottom of the steam table.

He recalled the incident concerning the "nigger in the kitchen" remark. He said that Mr. Lindo came to him and accused him of making the remark. He denied it and went right to Clyde Vieira to report on the situation. He said he did not want Clyde hearing about it from someone else. Mr. Stagg wanted to tell Mr. Vieira that it was not true.

He gave his version of the incident to Mr. Vieira. Mr. Vieira asked whether there was any truth to the allegation, and he denied it. Mr. Vieira said he would go and speak to Mr. Lindo about it.

Mr. Stagg testified that racial remarks are not tolerated at Canadian Tire. He said that joking did occur, and said that, as a person born in Newfoundland, he was sometimes the butt of "Newfie jokes." In cross examination, he was asked whether it was true that racial joking is a regular part of life at the Clark Blvd. facility. Mr. Stagg indicated that it does happen, but "not every day". When asked whether such joking could be offensive, he replied that it was a "subjective" thing. He recalled an incident 5 to 10 years previously when a temporary employee referred disparagingly to Arabs in the presence of someone from the Middle East. Mr. Stagg recalled saying "Don't say that in front of this person, he may take offence." I note that his objection was not to the remark, but to the fact that it was said in the presence of a member of the minority disparaged.

Furthermore, in cross-examination, Mr. Stagg was asked about his witness statement prepared in the presence of the human rights officer, which is Exhibit 71 to this inquiry. The relevant portion of the statement upon which he was questioned reads as follows:

Q. Did you ever make any comments about Les, even in a joke that anyone might have taken as racist?

A. Not with regards to Les, no.

Q. From your answer I take it that something was said at some point about something that could have had racial overtones?

A. WITNESS ASKED TO GO OFF THE RECORD, OFFERED OBSERVATIONS ABOUT WAREHOUSE HUMOUR AND INCIDENT WHERE LES ACCUSED HIM IN HIS OFFICE

OF A RACIAL SLUR RE "NIGGER IN THE KITCHEN" WHICH THE WITNESS DENIED AND REPORTS TO HIS MGR.

Mr. Stagg, in my view, did not provide a satisfactory explanation for why he wanted to "go off the record" at this point, nor could he explain why he raised the question of "warehouse humour". In response to Mr. Lindo's allegation that he had responded to the accusation by saying "It was a joke," Mr. Stagg testified before me that he had said to Mr. Lindo "You must be joking." Mr. Stagg did not recall saying to Mr. Lindo that "we can stare at whoever we want to."

He did confirm the incident alluded to by Melanie Parsonage, in which Roger Blake had come out into the cafeteria to complain about the music that she and Mr. Lindo were playing. He testified that a meeting was in progress, and that the assembled managers were being distracted by Mr. Lindo and Melanie playing "their type of music". He said Roger Blake was closest to the door between the boardroom and the cafeteria, and opened the door and told Melanie to turn the music down.

## BRUCE PIGGINS

Following Mr. Stagg, the Respondents called Bruce Piggins, a manager in 1990, but now retired. He testified that he had no ongoing relationship of any sort with Canadian Tire, and no pension which arose from his employ there. According to Mr. Piggins, he attended one of the meetings at which Mrs. Parsonage was present during contract negotiations for the cafeteria. He said that Mrs. Parsonage stated to the managers that she would run the cafeteria for a year or so personally, and after that would get someone else to run it. At first, he said, the operation of the cafeteria was fine, although there was "maybe too much asparagus soup" on the menu. By August, he said, Mrs. Parsonage was present at the cafeteria perhaps three days a week. He testified that complaints began to arise at that time that the second shift wasn't able to get the main entree, as insufficient quantities had been prepared. This was so in August, before the cafeteria operation was turned over to Mr. Lindo in early September.

Mr. Piggins was present at the table when the alleged "nigger in the kitchen" incident occurred. He says that he heard no such comment "directed at Mr. Lindo" or otherwise. He indicated that he overheard part of the accusation which Mr. Lindo made to Tom Stagg, as he had happened by Stagg's office. He summarized it by saying that Mr. Lindo felt the whole table was laughing at him. Mr. Stagg said this was untrue. Later that same afternoon, Mr. Vieira came to him to discuss the situation. However, in cross examination Mr. Piggins testified that the first time he ever became aware that there was an allegation of a racial slur in the joke was when he saw a copy of the Human Rights complaint which Mr. Vieira showed him when it arrived months later. In my view, if this is accurate, it reflects poorly on Mr. Vieira's investigative thoroughness on the day the complaint about a racial joke was made.

Mr. Piggins was aware, in general terms, of the existence of an anti-discrimination policy at Canadian Tire. A copy is included in the Manager's Handbook, he said. He felt that the company dealt with racism through its "open door policy" which meant, in effect, that any employee could go to his manager about any problem which arose.

## WILLIE JOCHUM

Willie Jochum testified that he is one of Canadian Tire Corporation's oldest employees, in terms of years of service. He gave important testimony with respect to two allegations. First, he admitted that he had asked Mr. Lindo to leave the chair in the cafeteria in which Mr.

Jochum has always sat. While he indicated that this was done in a polite tone, it may well be, in my view, that he was somewhat imperious in the way that he spoke to Mr. Lindo. He agreed that he has told owners of distributorships (the franchisees who, according to the evidence, have very high status at Canadian Tire) that they should get out of his chair. Mr. Jochum also denied that he had refused to be served at any time by Mr. Lindo; he pointed out that the cafeteria was a self-serve cafeteria. He did recall a time he felt Mr. Lindo had given him incorrect change; he denied that there had been a scene, but essentially testified that he had grumbled about it in a good-natured, but resigned fashion.

### THE REMAINING WITNESSES

I do not propose to recapitulate the evidence of each and every one of the remaining witnesses called by Canadian Tire and Clyde Vieira. One group of witnesses was made up of persons who had eaten at the cafeteria operated by Corporate Cuisine at the Clark Blvd. facility and had no involvement in the issues before me other than with respect to the adequacy of the cafeteria at that site. They included Kuldip Takel, Janki Ramnauth, Grace Samuel, Lorne Ste. Croix, Patricia Prior, Bertram Ross, and Peggy Ranjitsingh. Their evidence, taken as a whole, was to the effect that there were serious inadequacies in the operation of the cafeteria there. With minor exceptions, their evidence was internally consistent, and generally unshaken. They did not like the cafeteria at Clark Blvd. for many reasons. Some people testified that there was insufficient amounts of food prepared to insure that each member of the second luncheon shift; others felt the cafeteria was dirty. Many complained that the pricing system was arbitrary. Grace Samuel testified that on the days when Mrs. Parsonage was not present, Mr. Lindo and Melanie Parsonage seemed be more interested in chatting between themselves than they were in providing prompt and effective service to her and other customers. This was especially irritating when the employees were on short breaks, and would have to wait a longer period than necessary to be served. Lorne Ste. Croix, a 16 year employee, testified that he, and others who worked in the plant and were required to lunch at the second lunch period, would begin to edge away from their work stations several minutes before the lunch break began, in order to be first in line, and assured of getting an entree. He stated that he was a member of the cafeteria committee struck to address problems in the cafeteria, and that employees would complain to him about the various problems the cafeteria was experiencing. When asked how frequently he received complaints from other employees, he replied "I would say every day".

The Respondent called other witnesses as well. Lynn St. Andrews testified that there was no truth to Mrs. Parsonage's allegation that she had wanted help for a charity event until she heard that Mr. Lindo would be involved. She stated that she had no reason to request any help from Mrs. Parsonage, because her husband, through his employment, has access to very inexpensive food, which is the main cost for the charity event. Mrs. Parsonage's version, she said, is simply not true.

Clive Hinds gave evidence. He is a black man. He testified that he has known Clyde Vieira for 23 years, and that they are each other's best friend. They and their families see each other twice a month during the school year, and more in summer. Mr. Vieira is the godfather of Mr. Hinds' youngest son. He testified that Mr. Vieira is "absolutely not" a racist.

Mavis McLean, a black woman, testified that she was hired to replace the cafeteria operation at Canadian Tire shortly after the Corporate Cuisine contract had been terminated by Clyde Vieira. The period when she worked there was before the signing of the complaint by Diana Parsonage. She said that everyone at Canadian Tire was polite to her, and highly appreciative of her lunches. They were impressed with her timing and the quality of lunches she provided. She no longer works at the Clark Blvd. facility, by her own decision, but considers the workforce at Canadian Tire to be among the nicest group she has seen in 25 years of food service employment. The janitor, who she knew as Arthur, was particularly friendly to her, and helped her.

Clyde Vieira had approached her at the outset of her employment at Clark Blvd. To say that if she had any problems with anyone giving her "a hard time", she should come to him. Under cross-examination, she was asked whether she had ever been subjected to any racial harassment in any place where she had worked. She vividly recalled an incident, and described the steps she took to remedy it. She had no difficulty recognizing a real situation of discrimination when she met with it; she simply did not believe the Clark Blvd. environment was discriminatory.

## ANALYSIS

I agree with counsel for the Respondents that a central question to be determined in this case is whether I can believe the evidence of Diana Parsonage with respect to what occurred at the Clark Blvd. Distributing Centre in the summer of 1990.

In considering this question, I have looked at her testimony for internal inconsistencies, and have then compared it with other versions of the same events. While I have no doubt that some of what Mrs. Parsonage has said is true, I have grave concerns as to her overall veracity when it comes to several crucial episodes in this case.

First of all, she testified that the "nigger in the kitchen" incident occurred on Mr. Lindo's first day at the Clark Blvd. facility. Her complaint, signed in the spring of 1991, says that it happened towards the end of his employment there. In her testimony before me, she added something which was nowhere alleged in the complaint, that another manager had responded to the words "there's a nigger in the kitchen" with the comment "but not for long". Mr. Lindo, whose recollection of the incident could be expected to be acute, made no mention of any such remark by anyone. In my opinion, Mrs. Parsonage has invented this second comment in order to strengthen her case. If believed, it would tend to establish the crucial link between the racist "nigger in the kitchen" comment, and the ultimate decision to terminate Mrs. Parsonage's contract at Canadian Tire. Similarly, Mrs. Parsonage has moved the date of the "nigger in the kitchen" comment from the end of Mr. Lindo's employ to the very first date he worked with her there. I do not believe that this transmigration occurred because of a change in Mrs. Parsonage's recollection. Rather, I believe that she changed the date in order to emphasize the hostility to a black person at Canadian Tire, and to explain the fact that, if her written complaint is accurate and complete, no one made any derogatory comment about Mr. Lindo for many months.

Furthermore, I believe that Mrs. Parsonage attempted to mislead me as to Mr. Lindo's qualifications for the position of manager of the cafeteria. She testified that his relevant experience included the produce department at A. & P., Pizza Hut, and O'Tooles' Restaurant. Indeed, she said she discussed his qualifications and experience with the manager of O'Tooles'. At the time that Mrs. Parsonage testified, I had been informed by counsel for the Commission that Mr. Lindo could not be found, and that it was therefore proposed to proceed in his absence. However, he was found, and did testify subsequently. He stated that he had been a bagging clerk at A. & P., and that his duties included retrieving metal grocery carts from the parking lot. He further testified

that, at the time he was hired by Mrs. Parsonage, he had not worked at O'Tooles' Restaurant. He worked there after he had left the employ of Diana Parsonage. I believe Mr. Lindo on this point. Therefore, Mrs. Parsonage's testimony about checking his qualifications with the manager of O'Tooles' cannot be correct. Mrs. Parsonage, in my view, was attempting to mislead me. Her testimony in this regard is, I believe, related to her denial that Mr. Lindo was the "boyfriend" of her daughter Melanie. Mr. Lindo testified that he had met Melanie Parsonage shortly before he began working at Clark Blvd., and had, among other things, taken her to the school "Prom" that year. While Melanie Parsonage tried to limit the consequences of this contradiction by stating that Mr. Lindo was not her boyfriend because they were not "intimate", she confirmed that they went on dates, went to clubs, etc.

On the basis of this evidence, I conclude that the main reason Mrs. Parsonage hired Mr. Lindo to work with her in 1990 was not his experience, which was minimal, but his relationship with Melanie. I further conclude that Mrs. Parsonage wished to obscure this fact, and consequently altered her testimony on the relevant points.

It will be recalled that Mrs. Parsonage testified that, on the second day of Mr. Lindo's employ, she had sent him to the boardroom to provide food and drink for a manager's meeting. She testified that he was unceremoniously ejected, and that Mr. Vieira told her to take care of the meeting. If true, this would be compelling evidence of a discriminatory attitude at Canadian Tire with respect to Mr. Lindo. However, this allegation does not appear in Mrs. Parsonage's complaint, and Mr. Lindo did not mention it in his testimony. In my view, had this event occurred, it is impossible that Mr. Lindo would have forgotten it. I believe that the event did not occur. This also applies to the suggestion that Mr. Lindo was ejected from the employees' shop for no apparent reason. Mr. Lindo, in my view, is not a person who would forget a clearly discriminatory episode such as this. The fact that he made no mention of it is a consequence of the fact that the incident never occurred.

Finally, I believe Mr. Lindo, rather than Mrs. Parsonage, as to the reasons for the food shortage on September 17th, the day when Mr. Lindo had to leave the cafeteria and go out to buy food. Mrs. Parsonage suggested that someone had sabotaged the freezer; she intimated that this was part of the nefarious attempt to embarrass Mr. Lindo while he ran the cafeteria. Mr. Lindo said the problem with the freezer arose some time earlier than the 17th; he did not suggest anything untoward had occurred, other than that a plug had come out. The occasion on which there was no food, he said, was due to a failure on the part of the supplier.

He had been told this by Mrs. Parsonage. Therefore, the lack of food on that day was not caused in any way by employees of Canadian Tire.

Given my conclusions about Mrs. Parsonage's willingness to embellish, and indeed, manufacture evidence when it suits her purpose. I am unwilling to place any credence on her testimony as to other events to which she was the sole witness. I conclude that there is insufficient reliable evidence to allow me to take that testimony into account in coming to my decision.

There are several incidents which were witnessed by several persons, however. These are, primarily, the "nigger in the kitchen" event, the occasion when Mr. Lindo was told to get out of Mr. Jochum's chair, and the occasion when Mr. Jochum allegedly refused to be served by Mr. Lindo. The first of these was witnessed by Mr. Lindo, as was the second. The third incident appears to have been witnessed by Mr. Lindo as well as Melanie Parsonage. Other alleged incidents, such as Roger Blake telling Mr. Lindo and Melanie to turn down their music, are so obviously without discriminatory content that I do not propose to discuss them.

I have come to the conclusion that the "nigger in the kitchen" incident did indeed occur. I believe it probably occurred later, rather than earlier, in Mr. Lindo's tenure, but I am satisfied on the balance of probabilities that it occurred in something approaching the way Mr. Lindo described it. That is, I believe that a number of managers were seated at their usual table, having lunch, and, as was apparently common, were laughing and joking among themselves. I believe that one of them told a joke with a punch line including the words "there's a nigger in the kitchen". I believe that this joke was not spoken loudly, in order to cause Mr. Lindo pain, but that he did overhear it. I conclude that it was an incident of what has been referred to as "warehouse humour," humour which crosses lines of general acceptability, and which might be shocking to the community.

I am unable to come to a conclusion as to which person said the offending words. Mrs. Parsonage and Mr. Lindo differed as to who it was, and, given all the circumstances, it was a situation in which a mistake could easily be made. Although Mr. Lindo said he saw the words being spoken by an unknown manager, I believe that it is more likely that he was busy at his work, and that he looked toward the managers' table only when the offending words were heard by him. At this point, I believe, he saw Tom Stagg "staring" at him. In my view, it is likely that Mr. Stagg was aware of Mr. Lindo's presence, and looked at him after the offending words were spoken by someone, to ascertain his reaction. I believe that when Mr. Lindo confronted Mr. Stagg later in

the office, Mr. Stagg did indeed respond "It was just a joke" and not, as he testified before me, "You must be joking".

Respondents' counsel has suggested that Mr. Lindo simply misheard the "nigger in the kitchen" comment. I have concluded that it is substantially more likely that he did not. First, I believe that jokes based on ethnic stereotypes do occur at the Clark Blvd facility. The jokes are no doubt generally told by people who have reason to believe that their listeners will not object. It may be that employees feel less constrained during their lunch periods than during the time that they are actually on company business. In evidence, however, every witness who was present at the table at the crucial moment stressed that the joking had not been directed at Mr. Lindo. Only later, and in my view, less comfortably, did they deny that any racial joke at all had actually been made. I have no doubt whatsoever that no one directed a joke at Mr. Lindo. However, I do believe that the joke was made, and that part of its impact came from the fact that Mr. Lindo, a black man, was standing nearby, in the kitchen.

Similarly, Mr. Stagg testified that he had not said "It was just a joke" to Mr. Lindo, but rather, had said "You must be joking". Again, Mr. Lindo had no reason to invent the words he attributed to Mr. Stagg. The words "It was just a joke" do express what I believe to have been the attitude of those at the table to the "nigger in the kitchen" incident.

In coming to this conclusion, I have been assisted by the evidence of Dr. Henry, cited above. I do not think that Mr. Lindo, at that time an assistant in the cafeteria, and without any friends in the Clark Blvd. facility, would have left his workplace and marched through the plant and into a senior manager's office to confront him about a remark the manager had laughed at, unless Mr. Lindo were certain about what he had heard. He was not shaken at any point in cross-examination. He has no pecuniary interest in this matter, did not lay a complaint, and has no ongoing relationship with the complainants which might tempt him to alter his evidence. In short, I believe him with respect to what occurred.

It is true that in coming to this conclusion, I have rejected the testimony of a number of people who were seated at the managers' table, all of whom testified that they heard while they were joking, they heard no such words as "nigger in the kitchen". These witnesses are people who have worked together for many years, and indeed, have had friendly, relaxed daily lunches together for decades. I fear that this friendship has caused each of them to be unwilling to point out to me, and to Mr. Vieira and other management at Canadian Tire, who it was who uttered the offending

words. The evidence was uncontradicted that a manager who used the word "nigger" would be fired summarily; I believe that when Clyde Vieira investigated on the day in question, he was not told the whole truth; there was a closing of ranks around the perpetrator, a closing of ranks which has continued to date.

That closing of ranks was made easier by Clyde Vieira's investigation of the incident. Mr. Vieira was a compelling and truthful witness, and he made no attempt to put himself in a better light than the facts warranted. For example, he made it clear that when he investigated the incident he did not ask Mr. Lindo for his version of the event; rather, he heard Tom Stagg's version of Mr. Lindo's concerns, and then proceeded to upbraid Mr. Lindo for daring to speak to Tom Stagg directly. He subsequently spoke to the others who were present who belonged to the management team, and got denials from all. He apparently did not mention the fact that the allegation was that a racial joke had been told, since some managers found this out only when a complaint under the *Human Rights Code* was received. He did not speak to members of visible minorities who sat at adjoining tables, and so did not benefit from their testimony. I am left with the impression that he asked his long-time colleagues whether they had made remarks directly to Mr. Lindo, and when they said that they did not, he left the matter there. It is my view that Canadian Tire Corporation would have been better served, had Mr. Vieira made use of the option set out in the company anti-discrimination policy, and called in persons from Human Resources to make a proper investigation.

The law requires that a complete, careful, and sympathetic investigation be carried out by employers when faced with allegations of racial or other harassment which may violate the *Human Rights Code*. In *Hinds v. Canada (Employment and Immigration Commission)* (1988) 10 C.H.R.R. D/5682 the Board of Inquiry adopted a dictum of the United States District Court in *Munford v. James T. Barnes & Co.* 441 F. Supp. 459 (1977) as follows:

An employer may be liable for the discriminatory acts of its agents or supervisory personnel if it fails to investigate complaints of such discrimination. The failure to investigate gives tacit support to the discrimination because the absence of sanctions encourages abusive behaviour... The court does hold that an employer has an affirmative duty to investigate complaints of sexual harassment and deal appropriately with the offending person.

The same principle applies in cases such as this, when racial harassment is alleged. In my view, the investigation undertaken by Mr. Vieira was so flawed as to amount to a failure to investigate.

However, given that I have found that there was no breach of the Code, this failure does not entail legal consequences in the circumstances of this case.

The second incident which was witnessed by someone other than Mrs. Parsonage was the incident in which Willie Jochum told Mr. Lindo to get out of his chair. Mr. Lindo testified to this incident, as did Willie Jochum. I find that the incident occurred, but that it was innocent of racial overtones. Mr. Lindo testified that he "didn't see (Mr. Jochum's) name on the chair", but that, I find, was simply a result of his being a relative newcomer to the facility. All witnesses, including Mrs. Parsonage, agreed that Willie Jochum always sat in that chair when in the cafeteria. His adverse possession of it was known to all, with the exception of Mr. Lindo. While Mr. Lindo may have felt that there was a racial element to the command that he leave Mr. Jochum's seat, I cannot find any such content. Indeed, Mr. Lindo testified that he thought that Germans like Mr. Jochum were prejudiced against blacks; it may be that this stereotype influenced his assessment of the situation. In any event, his use of this stereotype to buttress his opinion of Mr. Jochum undercuts any credibility his assessment might otherwise have on this point.

The third incident which was witnessed by someone other than Mrs. Parsonage was the incident related by Melanie Parsonage, where Mr. Jochum was alleged to have asked to be served by her rather than Mr. Lindo. Mr. Lindo recalled an incident where there was a dispute over whether he had provided the correct change to Mr. Jochum, and agreed that Mr. Jochum was served by him on subsequent occasions. Willie Jochum also recalled an incident concerning the change given by Mr. Lindo, but denies that it amounted to anything more than natural concern that he had not received correct change. Melanie Parsonage testified that Willie Jochum had told her (and, in reexamination she stated he "whispered" to her) that he wished to be served by her rather than by Mr. Lindo. Mr. Jochum testified that he did not say this.

I am unable to determine whether all the witnesses are discussing the same incident. Mr. Jochum and Mr. Lindo, who were on opposite sides of the dispute, recall an argument over the change given by Mr. Lindo. They agree that no racial epithets were used, though Mr. Lindo believes that he could tell by body language that Mr. Jochum was acting in a prejudiced manner. Mr. Lindo said nothing about anyone having refused to be served by him, or preferring Mrs. Parsonage or Melanie Parsonage to him. That is so even though Diana Parsonage testified that he had overheard Willie Jochum's statement that he did not wish to be served by Mr. Lindo. I do not believe it is possible that this incident occurred as Diana Parsonage told it, because, if it had, Mr. Lindo would have recalled it.

Melanie Parsonage did not indicate that Mr. Lindo had overheard the remark made by Willie Jochum. Indeed, she concluded by saying that the remark had been whispered by Mr. Jochum. Given Mr. Jochum's overall flirtatious behaviour with the female employees at Canadian Tire, I am unable to attribute a racial, or discriminatory nature to this remark, if in fact it was said. However, given the varying versions of Mr. Jochum's alleged refusal to be served, I am unable to conclude that it has been proven to have occurred.

In conclusion then, there are only two incidents alleged by the complainant that I am satisfied did occur. They are the "nigger in the kitchen" incident, and the demand by Willie Jochum that Mr. Lindo get out of his chair. As I have noted above, I do not believe that the latter incident had a racial character, or was motivated, whether consciously or unconsciously, by prejudice.

A single improper and insulting joke, told over the luncheon table by employees on break does not constitute a violation of the *Human Rights Code: Simms v. Ford Motor Co. of Canada* (Ontario Board of Inquiry), Krever, J., June 4, 1970. That is so even if the epithet is used by a supervisor, if the episode is isolated: *Dhillon v. F.W. Woolworth Ltd.* (1982) 3 C.H.R.R. D/743. While I am able to conceive of egregious racial or other threats or comments which, even if made only once, would constitute an infringement of the *Code*, I have concluded that the situation before me falls short of that.

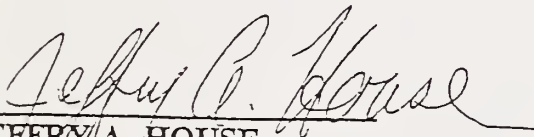
Even if I had concluded that the "nigger in the kitchen" incident constituted a violation of the *Human Rights Code*, the complainants would still not succeed. I am not persuaded that the incident was connected to the decision by Clyde Vieira to terminate the contract with Corporate Cuisine. I find that the loss of a full lunch period due to a lack of supplies in the cafeteria, and the consequent \$600.00 loss to Canadian Tire, an incident that all witnesses including Mrs. Parsonage referred to, justified the termination of the contract. Corporate Cuisine had a contract obliging it to provide an industrial cafeteria "supplied with appropriate merchandise of good quality" (see Exhibit #5). This term was breached and there is no evidence that the decision by Mr. Vieira to terminate the contract was contaminated by bias of any sort. I do not believe that the reasons offered by Canadian Tire and by Mr. Vieira are a pretext.

## COSTS

Counsel for Canadian Tire Corporation and Clyde Vieira submitted that the complaint had been made in bad faith, and that therefore I should order the Commission to pay costs pursuant to s. 41(4)(a) of the *Code*, I decline to do so. I have found that neither Clyde Vieira nor Canadian Tire Corporation has violated the *Code*. But I have also found that at least one racial incident occurred at the Clark Blvd. facility, and I therefore do not believe that Mrs. Parsonage's complaint can be said to be frivolous, vexatious, or made in bad faith.

## DECISION

The complaint against Canadian Tire Corporation Ltd. and Clyde Vieira is dismissed. The Respondents' motion for costs is also dismissed.

  
JEFFREY A. HOUSE  
Chair

November 1, 1995

Date

